

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
JOSE PENA,

Petitioner,

- against -

STATE OF NEW YORK,

Respondent.

-----X  
DEBORAH A. BATTS, United States District Judge.

This matter is before the Court upon the June 2, 2008 Report and Recommendation of United States Magistrate Judge Henry B. Pitman. Pursuant to 28 U.S.C. § 636(b)(1)(C), "[w]ithin ten days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations." 28 U.S.C. § 636(b)(1)(C); see also Fed. R. Civ. P. Rule 72(b) (providing that "[w]ithin 10 days after being served with a copy of the recommended disposition, a party may serve and file specific, written objections to the proposed findings and recommendations"). Despite being advised of this procedure in Magistrate Judge Pitman's Report and Recommendation, to date, Petitioner Jose Pena has filed no objections.

Having reviewed the Report and Recommendation, and finding no clear error on the face of the record, see 28 U.S.C. § 636(b)(1)(B), it is hereby ORDERED AND ADJUDGED as follows:

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 8/26/2008

04 Civ. 9499 (DAB) (HBP)  
ADOPTION OF REPORT  
AND RECOMMENDATION

1. The Report and Recommendation of United States Magistrate Judge Henry B. Pitman, dated June 2, 2008, be and the same hereby is, APPROVED, ADOPTED, and RATIFIED by the Court in its entirety; and

2. The instant Petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254, is hereby DENIED. As Petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue. See 28 U.S.C. § 2253; Lozada v. United States, 107 F.3d 1011 (2d Cir. 1997). The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith. See Coppedge v. United States, 369 U.S. 438 (1962). The Clerk of Court is directed to close the docket in this case.

SO ORDERED

DATED: New York, New York

August 25, 2008

Deborah A. Batts  
DEBORAH A. BATTS  
United States District Judge